

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BOBBY DARRELL COLBERT,

10 Petitioner,

11 v.

12 RON HAYNES,

13 Respondent.
14

CASE NO. C18-1350RSM

ORDER ON LIMITED REMAND
DENYING A CERTIFICATE OF
APPEALABILITY

15 This matter is before the Court on a limited remand from the Ninth Circuit Court of
16 Appeals for the “purpose of granting or denying a certificate of appealability at the court’s earliest
17 convenience.” Dkt. #51. The Court previously dismissed Petitioner’s § 2254 Petition, as
18 recommended by United States Magistrate Judge Michelle Peterson, finding that it was an
19 improperly filed successive habeas petition. Dkt. #43. Petitioner had filed four prior petitions
20 challenging his state court judgment and argued that this Petition, his fifth, was not successive
21 because his judgment had been amended. The “amendment” was correction of a scrivener’s error
22 incorrectly listing the statutory maximum term for a convicted offense. The “amendment” did
23 not alter the crimes that Petitioner was convicted of or the sentence that was imposed. With no
24 legal support for Petitioner’s position, the Court concluded that “the Petition is an improperly
25 filed successive petition and should be dismissed.” *Id.* at 2.
26

1 A petitioner seeking post-conviction relief under § 2254 may appeal this Court's
2 dismissal of his habeas petition only after obtaining a certificate of appealability from a district
3 or circuit judge. 28 U.S.C. § 2253(c)(1)(A). The Court finds that a Certificate of Appealability
4 ("COA") is not warranted in this case. A COA may issue only where a petitioner has made "a
5 substantial showing of the denial of a constitutional right." *See id.* § 2253(c)(3). A petitioner
6 satisfies this standard "by demonstrating that jurists of reason could disagree with the district
7 court's resolution of his constitutional claims or that jurists could conclude the issues presented
8 are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322,
9 327 (2003). Because reasonable jurists cannot differ in that conclusion that the Petition is
10 successive, it does not deserve encouragement to proceed further.
11

12 Accordingly, having reviewed the record, the Court finds and ORDERS that a certificate
13 of appealability is DENIED. The Clerk shall forward a copy of this Order to the Ninth Circuit
14 Court of Appeals.
15

16 Dated this 6 day of May, 2019.

17
18 

19
20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
22
23
24
25
26